

*Vol. 631*

No. 252  
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LONDON: JOHN MURRAY, 50A ALBEMARLE STREET, W. 1.

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## ABRAHAM LINCOLN, *ADVOCATE.*

BY HIS HONOUR JUDGE PARRY.

OF the log-cabin life of Abraham Lincoln from his birth in 1809 to his election for Legislature in 1834 every schoolboy knows something. The stories of the heroism of his early life are parables in cottage homes on both sides of the Atlantic. In the same way everyone is familiar with the great drama of his career as President, with its terrible scenes of war and final tragedy of murder. Told and retold in memoirs, histories, poetry, and fiction, there is already a halo of literature around Lincoln that only shines on the great figures of the world.

It is somewhat surprising that—in this country, at all events—so little is known about his career as an advocate which from 1836 to 1860 occupied the best years of his life. Joseph Choate, speaking at Edinburgh, told us: ‘I lay great stress on Lincoln’s career as a lawyer—much more than his biographers do; I am sure his training and experience in the Courts had much to do with the development of those forces of intellect and character which he soon displayed in a wider area.’ Our good ambassador was right, but he did not trouble us with the reason of this neglect, though no doubt his critical insight had diagnosed it. The fact is that it is distasteful to the average man to find that his hero is a lawyer, and Lincoln’s biographers and historians, who with true literary instinct please to write and write to please, have allowed his twenty-four years of professional life to become a colourless background to the stirring story of his political career that they may please the groundlings who have a high-souled hatred of the lawyer politician. Although we may not go all the way with an American writer who says ‘If Abraham Lincoln had not commenced lawyer he would not have concluded President,’ yet the story of his professional life must contribute to our power of appreciating the character of the man and to a better understanding of the circumstances in which his genius was able to take root and flourish.

To a writer on the disadvantages of education, Abraham Lincoln is a human text. His schooling was of the scantiest. At some time or another every man must become his own schoolmaster if he seeks education. Abraham Lincoln began at once, and continued directing his own studies all the days of his life. At the

age of fourteen fortune had endowed him with the Bible, Æsop's Fables, 'Robinson Crusoe,' and 'Pilgrim's Progress.' There was also a 'History of the United States' and a 'Life of Washington.' He not only read his library, but he learnt it by heart. You can trace in his writings the directness and simplicity of Defoe and Bunyan, his love of apt parable may have been derived from Æsop, and the Bible confirmed his natural instinct for right action and strengthened his passionate love of honesty.

From the earliest he was an ardent student. He collected every scrap of paper he could find to make a commonplace book of extracts from volumes lent to him to read. He studied in the fields, under the trees, and by the waning firelight when all were asleep. His notebook was the boarded wall of the cabin, his stylograph a lump of chalk. An old farmer recalls him sitting barefoot on a wood pile reading a book. This being such an extraordinary proceeding for a farm hand, he asked him what he was reading.

'I'm not reading,' replied Lincoln, 'I'm studying.'

'Studying what?' asked the farmer.

'Law, sir,' was the dignified reply.

'Great God Almighty!' ejaculated the farmer in an outburst of stupefied piety, and went his way in amazement.

But years afterwards he was the honoured possessor of a true story of a great hero, and biographers made pilgrimages to hear the old man tell it.

In 1833 a disastrous partnership in a small store came to an untimely end, leaving Lincoln with a legacy of debt which he honourably paid off in succeeding years. He was now four-and-twenty, and the only asset of the business he retained was a copy of 'Blackstone's Commentaries,' which he had found at the bottom of a barrel of household débris which the firm had purchased at a sale. He borrowed other law books, and is said at this time to have possessed an old volume of Indiana statutes which he learned by heart and used to quote effectively in later years. He acted as a sort of 'next friend' to parties before the local justices of the peace, and drew mortgages and contracts for his neighbours, though he does not seem to have received pay for these services. It was the only apprenticeship to the law that he could afford, and he became an articulated clerk to himself, so to speak.

By turns he was a store clerk, surveyor, and postmaster at New Salem, until 1834, when he was elected to the Legislature, and had

to borrow two hundred dollars to buy clothing to be fit for his new dignity. On March 24, 1836, he became legally qualified to practise the law, and left New Salem to settle in the county town of Springfield, and entered into partnership with a lawyer from Kentucky, J. T. Stuart, who had already shown him much kindness.

The story of his coming to Springfield is told by his friend Joshua Speed, a prosperous young merchant of the town, to whom he went on his first arrival.

‘He had ridden into the town,’ writes Speed, ‘on a borrowed horse and engaged from the only cabinet-maker in the village a single bedstead. He came on to my store, set his saddle-bags on the counter, and inquired what the furniture of a single bedstead would cost. I took slate and pencil, made a calculation, and found the sum for furniture complete would amount to seventeen dollars in all.

‘Said he, “It is probably cheap enough; but I want to say that cheap as it is I have not the money to pay, but if you will credit me until Christmas, and my experiment here as a lawyer is a success, I will pay you then. If I fail in that, I will probably never pay you at all.”’

The good Speed was so touched by the melancholy tones in which he spoke of possible failure that he offered him a share of his own room, which contained a large double bed.

‘Where is your room?’ asked Lincoln.

‘Upstairs,’ said his friend, pointing to a stairway that led out of the store.

Lincoln hitched up his saddle-bags, ran upstairs, and took possession of his room, returning in a few moments, smiling contentedly, and announced ‘Well, Speed, I’m moved.’

One of Speed’s store clerks was William H. Herndon, for whom Lincoln had a great affection. He also slept in the big room over the store, and the three young friends were all earnest in politics, study, and debate. On leaving Stuart, Lincoln became partner with Stephen T. Logan for a few years, until both were running for Congress, when they parted in a friendly spirit, and Lincoln was on his own. It was then, in 1845, that he proposed to his young friend Herndon that he should come into partnership with him. The young man hung back on the ground of want of practice and inexperience, but Lincoln clinched the matter in his kindly, masterful way, saying: ‘Billy, I can trust you, if you will trust me.’ Billy and Abraham were Jonathan and David through



sixteen years of practice in the law, and it is through his junior partner's reminiscences that we gain the most intimate picture of Lincoln the advocate.

To appreciate fairly the powers of Lincoln among the lawyers of his day, we must not forget how different were the circumstances of the administration of justice from anything we have experienced. Lincoln had seen even rougher courts of justice than those he practised in. We know that as a lad he used to haunt the Boonville Court-house whenever a trial was forward, and years afterwards, at the White House, reminded Breckenridge the advocate that he had heard him defend a murderer there. 'I concluded,' said Lincoln, 'that if I could ever make as good a speech as that, my soul would be satisfied, for it was the best I had ever heard.' In these earliest days the Court-house was merely a log hut, and the hunters and trappers who formed the jury retired into the woods to consider their verdict.

Mr. Hill, in his admirable essay on 'Lincoln the Lawyer'—a book too little known in this country—reports the address of a learned judge to the prisoner in 'The People v. Green' to illustrate the manners of pioneer justice. 'Mr. Green,' began the learned judge very politely, '*the jury* in their verdict say you are guilty of murder, and the law says you are to be hung. Now, I want you and all your friends down on Indian Creek to know that it is not *I* who condemn you, but the *jury* and the *law*. Mr. Green, the law allows you time for preparation, so the Court wants to know what time you would like to be hung.'

The prisoner 'allowed' it made no difference to him, but His Honour did not appreciate this freedom of action.

'Mr. Green, you must know it is a very serious matter to be hung,' he protested uneasily. 'You'd better take all the time you can get. The Court will give you until this day four weeks.'

The prosecutor thought this but a tame ending, and reminded the judge that the correct thing was to pronounce a formal sentence and exhort the prisoner to repentance.

'Not at all,' interrupted the judge. 'Mr. Green understands the whole matter as if I had preached to him for a month. He knows he's got to be hung this day four weeks. You understand it that way, don't you?'

Mr. Green nodded, and the Court adjourned.

Rough and ready as the formalities of justice might be, it was very necessary in the judge's own interest to make it clear that what

he was administering was really law. Too much learning was apt to puzzle a backwoodsman jury, and Mr. Hill has another contemporary story of a foreman who returned to a learned judge to say his jury could not agree on their verdict, and on being asked what the trouble was, replied: 'Judge, this 'ere is the difficulty. The jury want to know if that thar what you told us was r'al'y the law or on'y jist your notion.'

Even when Lincoln joined the Illinois Bar the courts were very primitive. The judge sat on a raised platform with a pine or white wood board on which to write his notes. There was a small table on one side for the clerk, and a larger one, sometimes covered with green baize, for the lawyers who sat around and rested their feet on it. There were few law books. The Revised Statutes, the Illinois Form Book, and a few text-books might be found in most towns, but there were no extensive law libraries anywhere. From one Court-house to another the judge drove in a gig or buggy, the Bar following for the most part on horseback, with a clean shirt and one or two elementary law books in their saddle-bags. Some too poor to ride tramped the circuit on foot, but as there were many horse-thieves to defend, and a horse was a well-recognised fee, it was not long before a young man of ability was mounted.

Such was the circuit when Lincoln first joined it. He was then twenty-seven years of age, 'six feet four inches in height, awkward, ungainly, and apparently shy. He was dressed in ill-fitting homespun clothes, the trousers a little too short and the coat a trifle too large. He had the appearance of a rustic on his first visit to the circus.' He kept his bank-book and the bulk of his letters in his hat, a silk plug, and a memo would be jotted down on paper and stuck in the lining of his hat. No wonder Stanton, the courtly advocate of Chicago, sneered contemptuously at the 'long-armed creature from Illinois,' though he learned in the end to admire and respect him.

But the public recognised his capacity at once. In spite of physical and social drawbacks, Lincoln as an advocate was an immediate success. He was soon on one side or the other in every important case, and was pointed out to strangers by proud citizens of Springfield as 'Abe Lincoln, the first lawyer of Illinois!' He was a great favourite not only with the public, but with his fellow-lawyers on circuit. Although he never drank intoxicating liquor, and did not smoke or chew tobacco, he was fond of a horse-race or a cock-fight, and when addressing his fellow-countrymen drew

his illustrations from these pursuits, as when he crushed a swaggering opponent who evaded his argument by saying that he reminded him of 'Bap McNabb's rooster, who was splendidly groomed and trained for the fight, but when he was thrown into the ring, turned tail and fled, and Bap yelled after him, "Yes, you little cuss, you're great on dress parade, but not worth a damn in a fight!"'

A further reason for his popularity was his gift as a teller of stories and jests full of the wit and character of the free, outspoken, primitive people from whom he sprang. Foolish people have tried to record some of these things, still more foolish folk have endeavoured to prove that their hero was too pure and unspotted from the world to trifle with such nonsense. Wiser minds will recognise that since the world began the teller of a merry tale has never wanted for a jolly audience, and at the root of Lincoln's success with all sorts and conditions of men lay his gift of story-telling.

But the great qualities that brought him success as an advocate were his industry, honesty, and independence. Writing to a law student who had asked him the best method of studying law, he says: 'The mode is very simple, though laborious and tedious. It is only to get books and read and study them carefully. Work, work, work is the main thing.' He himself used to read aloud when studying, for then, he said, 'Two senses catch the idea; first I see what I read, second, I hear it, and therefore I can remember it better.' 'Billy' Herndon, his law partner—who plays the part of Boswell to his Johnson—draws a quaint picture of him at a circuit inn. 'We usually at the little country inns occupied the same bed. In most cases the beds were too short for him, and his feet would hang over the foot-board, thus exposing a limited expanse of shin bone. Placing a candle on a chair at the head of the bed, he would read and study for hours.' His studies were by no means confined to law, and he never allowed his mind to become 'case-ridden'; indeed, one of his greatest qualities was his power to stand on his own and reason out for himself the true aspects of a case apart from 'authorities.'

But the foundation of his fame and success as an advocate was his honesty. As a friendly critic said, he was 'perversely honest.' The faithful 'Billy' tells a story of his first appearance in the Supreme Court of Illinois, and quotes his words as follows:

'This is the first case I have ever had in this Court, and I have therefore examined it with great care. As the Court will perceive by looking at the abstract of the record, the only question in the case



is one of authority. I have not been able to find any authority to sustain my side of the case, but I have found several cases directly in point on the other side. I will now give these authorities to the Court and submit the case.'

Some biographers reject this story as improbable, and lawyers have criticised his conduct adversely. The question whether, if an advocate knows of a decided case in point against him, he ought or ought not to reveal it, has often been discussed. Joshua Williams, the Gamaliel of Real Property Law, boldly states: 'It seems to me that in principle this is no part of his duty as an advocate,' but he admits that if the judge asks him whether he knows of any case against him, he is bound to tell the truth. With all respect for so great an authority, I, for my part, am not convinced. If an advocate knows that the law is *x*, he has no right by acts of commission or omission to infer to the Court that it is *y*. I think we may accept 'Billy's' story as true, and conclude that Lincoln not only took that course, but that it was the right course to take.

As long as a lawyer is ready to forgo fees, there is no reason why he should not ride his hobby-horse of honesty to his heart's content. Lincoln and Herndon as a firm set themselves out to conduct business on unusual lines, and maybe carried their ideals very far, but they made good. It was against their principles to contest a clear matter of right. If they thought a client was in the wrong, they told him so and sent him away. Even when they came to the conclusion that a client had a good case in law, they would not take it up if the moral aspect of it was cloudy. The following letter to a proposed client states Lincoln's views on the matter in his own words:

'Yes, we can doubtless gain your case for you; we can set a whole neighbourhood at loggerheads, we can distress a widowed mother and her six fatherless children, and thereby get for you six hundred dollars to which you seem to have a legal claim, but which rightfully belongs, it appears to me, as much to the woman and her children as it does to you. You must remember, however, that some things legally right are not morally right. We shall not take your case, but we will give you a little advice for which we will charge you nothing. You seem to be a sprightly, energetic man. We would advise you to try your hand at making six hundred dollars some other way.'

Lincoln put his personal point of view very forcibly before a young law student who had qualms of conscience about joining

the profession. 'Let no young man choosing the law for a calling yield to that popular belief that honesty is not compatible with its practice. If in your judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer.'

Of necessity, therefore, Lincoln was not a successful advocate in any case unless he was convinced of its righteousness. His limitations were well known, and he was not often called upon to defend prisoners. He did everything in his power to examine carefully into his own clients' grounds of action, but clients are often self-deceivers, and are apt not to tell the whole truth to their advisers. When Lincoln found in the middle of a trial that his client had lied to him, and that justice was opposed to him, he could no longer conduct the case with enthusiasm and courage. On one occasion he was appearing for a plaintiff, and in the middle of the case evidence was brought forward showing that his client was attempting a fraud. Lincoln rose up and went to his hotel. Presently the judge sent for him, but he refused to come back, saying 'Tell the judge my hands are dirty; I came over here to wash them.' To him the maxim, 'Come into court with clean hands,' was a command to be obeyed in spirit and letter.

This way of doing business was the only possible one for him, and he explained the necessity of taking whatever course he felt to be the right one in the following homely anecdote. He was riding on circuit and passed by a deep slough where he saw a wretched pig wallowing and struggling in the mud. It was clear to his mind that the animal could not release himself. However, the mud was deep, and Lincoln was wearing, what for him was unusual, a new suit of clothes. He rode on and left the pig to his fate. He could not get rid of the thoughts of the poor brute, and carried the picture of his death-struggle in his mind's eye. After riding on about two miles he turned back, waded into the mud, saved the pig, and spoiled his clothes. When he analysed his action, he said that this was really 'selfishness, for he certainly went to the pig's relief in order to take a pain out of his own mind.'

In the same way, to be connected in any way with dishonesty was painful to him. It is curious, therefore, that many biographers have accepted a story told about the famous Armstrong case, when he defended the son of Hannah Armstrong, who had shown him much kindness in his early days at New Salem, in which Lincoln is made the hero of as cute and wicked a deception as was ever

practised on a Court and jury. The charge was murder committed at night, and the case turned on identity. One of the witnesses who saw young Armstrong strike the fatal blow was asked by Lincoln how he managed to see so clearly, and replied, 'By the moonlight,' adding that 'the moon was about in the same place that the sun would be at ten o'clock in the morning, and was almost full.' On this Lincoln called to an usher for an almanac, and on its production it appeared that the moon set at midnight and was only slightly past its first quarter.

The charge against Lincoln was that he had given the usher the almanac to have by him and that it was an almanac of the previous year. That Lincoln should have risked such a cheat, and that counsel on the other side and the judge and jury should not have discovered it, is grossly improbable, but the recollection of those present and a reference to an actual almanac show that this story, which for many years had considerable currency, is a myth. Armstrong's life was saved by Lincoln's eloquence, he was pleading for the life of a child he had rocked in the cradle, the son of a woman who had mothered him in his youth, and he threw his heart and soul into the lad's defence.

To reproduce forensic eloquence by any form of literal illustration is scarcely possible. One wants the figure, the tone, the gesture, the crowded Court-house, the magnetic sympathy of the audience, the impassive attention of the jury, and the dramatic suspense of the moment. It is the capacity to turn all these things to account that produces forensic eloquence. Herndon describes a triumph of Lincoln on behalf of the widow of a revolutionary soldier. The defendant was a rascally agent who had pocketed half her pension by way of fee. The whole speech was a very eloquent appeal, and the final words to the jury, if you read them aloud that they may catch the ear, have the ring of sound advocacy in them. 'Time rolls by; the heroes of "seventy-six" have passed away and are encamped on the other shore. The soldier has gone to rest; and now, crippled, blinded, and broken, his widow comes to you and to me, gentlemen of the jury, to right her wrongs. She was not always thus. She was once a beautiful woman. Her step was as elastic, her face as fair and her voice as sweet, as any that rang in the mountains of old Virginia. But now she is poor and defenceless out here on the prairies of Illinois, many hundreds of miles away from the scenes of her childhood. She appeals to us who enjoy the privileges achieved for us by the patriots of the



Revolution for our sympathetic aid and manly protection. All I ask is, Shall we befriend her ?'

The poor old lady obtained judgment, Lincoln paid her hotel bill, and sent her home rejoicing and free of all expense. The notes from which he spoke give us an interesting peep behind the scenes into the machinery of advocacy. They run thus : ' No contract—money obtained by Defendant not given by Plaintiff—Revolutionary War—Describe Valley Forge privations—Ice—Soldiers' bleeding feet—Plaintiff's husband, soldier leaving home for army—Skin Defendant ! Close !' As a delighted contemporary remarked : ' When Abe set out to skin a defendant it was some !'

Although he did not rise to the extraordinary heights of vituperation to which O'Connell soared, he was a dangerous man to insult. Forquer, once a Whig, but then a Democrat and office-holder, built himself the finest house in Springfield and decorated it with the first lightning-rod that had ever been seen in the county. He had been abusing Lincoln as a young man who wanted taking down, and when Lincoln's turn came he appealed to the audience : ' It is for you, not for me, to say whether I am up or down. This gentleman has alluded to my being a young man. I am older in years than I am in the tricks and trades of politicians. I desire to live, and I desire place and distinction as a politician, but I would rather die now than like this gentleman live to see the day when I should have to erect a lightning-rod to protect a guilty conscience from an offended God.'

He never talked over the heads of the jury. He led them along with him. He was lucid and fair in statement and his skill lay in ' conducting a common mind along the chain of his logic to his own conclusion.' He grasped the great essential in advocacy, that you must not only know the real point of your own case, but that as a rule it lies in a very narrow compass, and that your main duty is not to lose sight of it yourself and never let the Court and jury get away from it. A new generation wanting to know by what trick Lincoln gained so many verdicts was enlightened by an old colleague who replied ' He instinctively saw the kernel of every case at the outset, never lost sight of it, and never let it escape the jury.' That, he said triumphantly, ' was the only trick I ever saw him play.' His powers of homely humorous illustrations often set the courts in a roar. When Lincoln's eye twinkled and he drawled out ' That reminds me,' a chuckle of approbation ran through the Court-house as when a favourite comedian steps on the stage. It is impossible to repro-

duce these stories effectively in print, but as good an instance as any is the following yarn by which he illustrated his client's point of view in an assault case.

'It reminds me,' he said, 'of the man who was attacked by a furious dog, which he killed with a pitchfork.

' "What made you kill my dog?" demanded the farmer.

' "What made him try to bite me?" retorted the offender.

' "But why didn't you go at him with the other end of your pitchfork?" persisted the farmer.

' "Well, why didn't he come at me with his other end?" '

Again, speaking to a jury on the preponderance of evidence, and trying to explain to them what a lawyer means by the phrase, 'weight of evidence,' he laid down the legal principle in these words: 'If you were going to bet on this case, on which side would you be willing to risk a "fippenny" ? That side upon which you would be willing to bet a "fippenny" is the side on which rests the preponderance of evidence in your minds. It is possible that you may not be right, but that is not the question. The question is as to where the preponderance of evidence lies, and you can judge exactly where it lies in your minds by deciding as to which side you would be willing to bet on.' A man who could talk horse sense after that fashion in a law court would be listened to in attentive sympathy by any twelve English-speaking men gathered together in the right box.

The circumstances under which his career as an advocate came to an end are part of a greater story. In June of 1860 Lincoln was waiting with his friends in a newspaper office at Springfield when the news flashed through from Chicago: 'The Convention has made a nomination, and Seward is—the second man on the list.' Lincoln cut short his friends' congratulations and pocketed the telegram, saying 'There is a little woman on Eighth Street who would like to hear about this.'

When the Presidential Election was over and he had to leave Springfield for Washington, he came into his office and spent some hours with his friend and partner 'Billy' Herndon, settling things up. After the business was done, he threw himself on to the old horsehair sofa and, gazing up at the ceiling in his favourite attitude when he was thinking out a law case, said with a sigh, 'Billy, how long have we been together?'

'Over sixteen years,' said his friend.

'We've never had a cross word during all that time, have we?'

'No, indeed we have not.'

He lay in thought for a few minutes, and then rose and gathered up a bundle of papers and books. As he said good-bye to 'Billy,' his eye caught the old signboard which hung on its rusty hinges at the foot of the stairway. 'I want that to remain,' he said in a low voice. 'Let it hang there undisturbed. Give our clients to understand that the election of a President makes no change in the firm of Lincoln & Herndon. If I live I'm coming back sometime, and then we'll go right on practising law as if nothing had ever happened.'

What did happen is written in the history of the world. One can scarcely believe that Lincoln himself ever expected to return and ride the Illinois circuit and sit in the Springfield office again. But he loved his profession, and he knew that his fellow-lawyers honoured and respected him. As long as the old sign hung on the stairway the President of the United States was still Abraham Lincoln, Advocate.





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